

REPORT - PLANNING COMMISSION MEETING
September 8, 2005

Project Name and Number: Property Access Municipal Code Text Amendment (PLN2005-00330)

Applicant: City of Fremont

Proposal: To amend the Fremont Municipal Code to facilitate property access by City staff and consultants for purposes of planning and development application review and inspection.

Recommended Action: Recommend to City Council

Location: Applicable citywide

Environmental Review: This project is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) - no potential of a significant effect on the environment.

Public Hearing Notice: Public hearing notice was sent to *The Argus* on August 22, 2005 to be published by August 25, 2005.

Executive Summary: To date, there has been no written policy dictating the circumstances under which City staff and consultants may enter private property for the purpose of planning and development application review and inspection. Each department has coordinated with applicants to find mutually agreeable times for necessary review to take place when a site inspection is required. There have been instances under which property owners have refused to allow site access for such review.

Establishing a common protocol to follow would provide for codified mutual expectations between City staff and consultants and property owners. Review and inspection for development projects differs from Code enforcement cases in that, with the former, the property owner has been proactive in submitting an application, and in the latter, Community Preservation or Police Department staff are responding to a complaint of a violation.

The purpose of this text amendment is to create a protocol only related to projects for which an active application has been submitted, and not to include responses to violations under the purview of Code enforcement or Police Department staff. The proposed protocol involves staff contacting the property owner, or the property owner's agent, at least three (3) days prior to the time that City staff, City officials, or consultants seek to enter the property for an inspection related to the development application. If the property owner, or the property owner's agent, does not return the staff contact, or refuses to allow access, this municipal code amendment would permit City staff to enter the site to conduct necessary inspections related to the development application (but excluding entry into residences or businesses).

Background and Previous Actions:

In August 2005, the following text was added to the Planning application required to be signed by a property owner or agent to process a development application:

"Upon three days prior notice by City of Fremont staff, I shall provide access to the subject site for City officials, staff, their agents, and consultants for the purpose of planning and development application review and inspection. Myself or my agent may accompany such persons while they access the site. If I fail to respond to a request for access within three days, City officials, staff, their agents and consultants are authorized to enter onto the site for such review and inspection."

While property owners currently acknowledge this statement with a signature for all new applications, a text amendment codifying this text is proposed to be added to the Municipal Code.

Project Description:

This Municipal Code text amendment is proposed to apply to "development projects." Development Projects, are defined in Section 8-2135.3 of the Fremont Municipal Code (FMC), and generally involve building structures or infrastructure, subdividing property, or altering the land. The Municipal Code definition of Development Project includes any activity under the purview of each individual division under the umbrella of the Development and Environmental Services Department, including planning, engineering, traffic, landscape architecture, building, or other City departments (e.g. fire) cooperating during plan review under an application pending before the Development Organization.

For many projects, staff members contact the applicant and agree upon convenient dates and times for inspections. This amendment is intended to allow similar communication to continue, but with a formalized way for City staff to secure access in extraordinary situations. While staff would still make contact with the property owner in each case, the property owner's signature on the application would serve as notice and permission granted, in accordance with the Municipal Code, for staff and its consultants to enter the property three days after such contact was made, even if the property owner did not return the contact, or did not agree upon the date and time for inspection.

General Plan Conformance: The proposed project is consistent with the existing General Plan because the overall goal of ensuring compliance with General Plan Goals and Policies is supported by the ability of City staff to review projects effectively. All General Plan Goals, Objectives and Policies relating to the improvement of projects with planning and development applications are supported by standardizing these administrative procedures.

Zoning Regulations: This modification of procedures would be applied uniformly for all properties in all zoning districts.

ENVIRONMENTAL ANALYSIS: The proposed project has been reviewed under the California Environmental Quality Act (CEQA) Guidelines and has been found to be exempt under Section 15061(b)(3) - no potential of a significant effect upon the environment.

EXHIBITS: Exhibit "A" (Municipal Code Text Amendment)

Recommended Actions:

1. Hold public hearing.
2. Find that the project is exempt from the California Environmental Quality Act per Section 15061(b)(3) of the CEQA Guidelines.
3. Find that the project is in conformance with the relevant provisions contained in the City's General Plan.
4. Find the public necessity, convenience and general welfare require the adoption of this Municipal Code text amendment (PLN2005-00330) because staff's ability to review projects in a timely and predictable manner saves both City and the applicant time and money and increases oversight of planning and development applications.
5. Recommend PLN2005-00330 to the City Council in conformance with Exhibit "A" (Municipal Code text amendment).

Exhibit "A"--Municipal Code Text Amendment

8-23300.3. Noticing requirements--property access for planning and development application review or inspection.

Unless otherwise provided by law, or unless otherwise arranged and mutually agreed to by a property owner (or the property owner's agent) and City, City staff shall give notice to the property owner (or the property owner's agent) three (3) days before accessing private property for the purposes of planning and development application review or inspection for development projects¹. The property owner (or the property owner's agent) shall provide access for City (including its employees, agents, consultants, and officials) to the subject site within three days. If the property owner (or the property owner's agent) fails to provide access within three days, City (including its employees, agents, consultants, and officials) is authorized to enter onto the site for such review or inspection. In no case shall City be authorized by this section to enter into or onto any residence or place of business except portions that are open to the outside, or non-habitable, or in a state of partial construction. The noticing procedure prescribed in this section shall not apply to, nor limit inspections otherwise allowed by the Fremont Municipal Code, nor shall this procedure apply to situations involving Community Preservation, Fire, or Police Department staff carrying out their otherwise duly-assigned duties. The City retains all rights under law to access private property and conduct other inspections.